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Freedom of Peaceful Assembly, Expression, and Association
Despite rights-protectingrhetoric, the Malaysian government has continued to curtail the rights to freedom of peaceful assembly, association and expression.

Peaceful Assembly
In early 2010a coalition of civil society groups organized Bersih 2.0, a social movement demanding clean and fair elections. In May 2011, its steering committee authorized a major public rallyfor July 9. In response, the minister of home affairs announced that a required police permit would not be granted and declared Bersih an illegal organization under the Societies Act, an order overturned in court a year later. Police raided the Bersih secretariat office, arresting staff and confiscating equipment, and on the streets harassed and arbitrarily arrestedBersihsupporters.On July 9, police broke up the event, using excessive force, beatings, tear gas, water cannon and arbitrary arrests. Less than a year later, at anotherBersih-organized rally held in Kuala Lumpur on April 28, 2012, police again respondedwith widespread excessive use of force.

The Peaceful Assembly Act (PAA), hastily passed by parliament in November 2012 over the objections of the Malaysian Bar Association and other civil society groups, formally revoked the provision in article 27 of the Police Act requiring police permission for public rallies. But in practice the PAA has been used to severelyrestrict rights. It forbids so-called "moving" assemblies, allows the police to impose broad and arbitrary conditions on proposed events, and sostrictly limits appropriate rally sites that organizing a legal gathering in an urban setting is difficult. The law makes it an offense for children under 15 to attend rallies and for adults to bring children to assemblies, effectively restrictingboth children and caregivers from exercising their rights to assembly.

At the People's Uprising Rally on January 12, 2013, the first organized under the PAA, the police set 27 conditions and followed up by investigating rule violationsthat were either trivial or protected under international law, such as carrying placardswith "inappropriate slogans."In Sabah, police ordered organizers of aFebruary 22 "Idle No More Long March" for indigenous rights and fair electionsto apply for a permitbecausepolice claimed it was not an "ordinary" march.

Freedom of Expression
The government employs a number of methods to limit the right to free expression.The print and broadcast media remain dominated by media companies with close ties to political parties aligned with the ruling coalition.

Government regulation of printed publications through the Printing Presses and Publication Act (PPPA) impedes access to information. An April 2012 amendment to the PPPA is less of a reform than the government has touted. It ends a yearly renewal requirement for publication licenses and provides for court review of the home minister's previously unlimited power to arbitrarily approve or revoke publishing permits. However, the law still imposes a three-year prison term for "maliciously published false news" and places the legal burden on the accused to disprove guilt. The PPPA has been used to block printing of publications that the government considers hostile, such as books by Zunar, apolitical cartoonist, and it has succeeded in limiting distribution of opposition party newspapers.After the Kuala Lumpur High Court's Appellate and Special Powers division ruled in October 2012that

there was no legitimate reason for the minister to reject on-line news portal *Malaysiakini's*application to produce a print edition, the government immediately appealed. The case is still pending.

Amendments to theEvidence Actin August 2012 mark the government's first overt attempt to censor the Internet. They tighten restraints by classifying computer owners and operators of computer networks as publishers, responsible for whatever is displayed on their screens. Unless those accused can prove they had nothing to do with the offending content, they can be convicted, raising serious concerns about presumption of innocence as well as the right to free expression.

In addition, the Malaysian Communications and Multimedia Act provides that "no content applications service provider, or other person using a content applications service shall provide content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person,"a broad definition permittingthe government to block a wide array of websites.

The Sedition Actand the Penal Code control public expression by criminalizing speech that the government allegestocontain a "seditious tendency," such as "to excite disaffection against the administration of justice in Malaysia," or to "promote feelings of ill will…between different races or classes."

In July 2012 the government announced that the Sedition Act would be replaced by a National Harmony Actthat would permit criticism of the government,but draw the line against speech or actions that could create tensions in a multi-ethnic society.

Freedom of Association

The Malaysian government compromises the right to freedom of association by regulations requiring that any society (other than trade unions, cooperative societies, and school committees) comprisingseven or more peoplebe registeredby the Registrar of Societies. Such societies shall "in conducting its affairs," uphold democratic government and Islam as the religion of Malaysia. The home affairs minister has "absolute discretion" to declare a society unlawful if he believes it would prejudice the "security of Malaysia" or "public order or morality." The Registrar of Societies may refuse or cancel the registration of a society on similar grounds.

Beginning in July 2012at least six government agencies alleged that Suaram, a leading nongovernmental organization, had illegally circumvented registration. Accusations included"hiding its true agenda," undermining the government of Malaysia, seeking foreign funds, and engaging in a series of "highly suspicious" financialtransactions.In late January 2013, the investigationby the Registrar of Societies was terminated with no charges filed.

Justice System

Administrative Detention

In a positive step, the government permitted the Emergency (Public Order and Crime Prevention) Ordinance 1969, which had been regularly used to hold criminal suspects without charge or trial, to expire in June 2012.

While the government's revocation of the notorious Internal Security Act (ISA) promised an end to the use of abusive administrative detention in Malaysia, the replacement Security Offenses (Special Measures) 2012 Act (SOSMA) provides only marginal improvements. SOSMA reducespreviously unlimited administrative detention to 28days, curtails the unchecked power of the home affairs minister to decide cases, mandates judicial oversight and a fair trial, and provides immediate access to relatives and legal counsel. However, the definition of a security offense is overbroad, police rather than judgesmay authorize communicationintercepts, and prosecutors may utilize secret witnesses and unsourcedinformation as evidence.Acquitteddefendants may be held indefinitely while their cases are on appeal.

The first SOSMA detentions demonstrated the police's ability to circumvent the law. After MohdHilmiHasim was arrested under the law on February 7, 2013, he was detained more than a week without access to a family member or a lawyer while police attempted to convince him to become a state witness against two others. He was finally charged with abetment on February 21. His mother, whom police had attempted to enlist in their efforts, reportedthat the police subjected her to threats and intimidation.

Police Abuse

Since Malaysia's first UPR review, the Royal Malaysia Police have continued to use unnecessary or excessive force to shut down protests, obtain coerced confessions, and mistreat persons in custody. Suspicious deaths in police custody, including three in January 2013 alone, are frequently attributed to suspects' pre-existing medical conditions or drug use. Post mortem inquiries, which must be conducted at a government facility, are often delayed and inadequate. Second inquiries require judicial approval and costs must be paid by those seeking the inquest.

The government continues to reject the establishment of an independent and impartial police complaints commission in accordance with therecommendations of the Royal Commission on police reform. A weaker substitute, the Enforcement Agencies Integrity Commission (EAIC), which focuses on not just the police but a total of 19 government agencies, has blamed a lack of adequate staff and budget to explain the delays in investigating complaints filed with it.

Lack of accountability for custodial deaths is exemplified by the case of GunasegaramRajasundrum, who died in police custody in July 2009. Despitewitnesses who testified topolice abuseand identified officers responsible, the coroner stated he could not reach a conclusion as to whether death resulted from drug use or police beatings.In 2013, Gunasegaram's family brought a civil suit against the government, the police, and the hospital. The proceedings revealed police threats to witnesses and claims by police that 'special rules' existedfor late night interrogations.To date, there is no available police report on the case and the civil suit is ongoing.

Sexual Orientation and Gender Identity

In violation of international standards against discrimination, Malaysian leaders continue to denigratelesbian, gay, bisexual and transgender (LGBT) persons. Prime Minister Datuk Seri Najib Tun Razak gave speeches in June and July 2012 in which he asserted that the activities of LGBT people do not "have a place in the country." In November2011, police closed down the SeksualitiMerdeka ("Sexual Diversity") Festival, stated the event was a threat to national security, and harassed and threatened organizers. The festival wasorganized tocelebrate"unity in diversity,"and planned to feature talks, workshops, literary events, stage performances, and an art exhibition.

Malaysia still criminalizes what it terms "carnal intercourse against the order of nature," under article 377 B of the penal code. Those convicted face penalties includingfines, whippings, and imprisonment for up to 20 years. Transsexuals are refused the right to change their gender classification on their national identity cards and cross dressing is prohibited.

Refugees, Asylum-Seekers, Migrants, and Trafficked Persons

Malaysia has not signed or ratified the 1951 Refugee Convention and has no refugee law or asylum procedure. The UN High Commissioner for Refugees (UNHCR) exercises its protection mandate in Malaysia by conducting refugee status determinations, but there is no guarantee that UNHCR-recognized refugees or asylum seekers with refugee claims pending will not be forcibly returned to their countries, thus violating the internationally protected prohibition against refoulement.

Twice in 2012-2013 the Malaysian authorities forcibly returned ethnic Uighurs with pending asylum claims to China, and in 2012 forcibly returned a Saudi national facing severe punishment for statements he made on his Twitter account.

Refugeesand asylum seekers in Malaysia face extortion and abuse from law enforcement officers. They are refused legal authorization to work, which increases their risk of exploitation, particularly as they often wait years for resettlement. Refugees' children have little or no access to education, and basic medical care is often beyond their financial reach.

Malaysia has not signed the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and has acted to stall adoption of a regional framework (pursuant to the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers) that would protect and promote the rights of all migrant workers in the ASEAN region.

In 2009 migrant domestic workers were excluded from key provisions of Malaysia's labor law. Although the government said it would take measures to bring the law into compliance with the Convention on the Elimination of All Forms of Discrimination against Women which has been ratified by Malaysia, little has changed. A 2011 memorandum of understanding with Indonesia allowsIndonesian domestic workers to keep their passports and guarantees a weekly rest day, but it has weakenforcement mechanisms. Malaysia still permits deduction of workers' wages to pay exploitive recruitment fees. Migrant workers remain subject to excessively long hours, lack of rest days, unpaid wages, restrictions on freedom of movement and association, and physical and sexual abuse, in some cases amounting to forced labor or trafficking.

Malaysia has failed to effectively combat human trafficking, preferring to focus on the criminal aspect of cases without permitting victims access to necessary social services. Trafficking victims are often locked away for extended periods in government-run shelters. Amendments to the Anti-Trafficking in Persons Act conflate people smuggling with human trafficking and create similarly harsh penalties for both acts, creating difficulties for effective and timely identification of trafficking victims, and extension of protection to them.

Recommendations to the Government of Malaysia

On Rights to Peaceful Assembly, and Free Expression and Association:

- Revise the Peaceful Assembly Act so that itpreserves freedom of peaceful assembly in line with international law and standards by permitting "moving" assemblies, eliminating a pre-determined list of proscribed places, narrowing permissible police restrictions to clearly defined acts to maintain public safety and order, and allowingchildren's participation in public assemblies.
- Repeal the Printing Presses and Publications Act, which requires government licensing of publications and interference with content.
- Revoke amendment 114 A to the Evidence Act, which extends culpability for Internet content to intermediate users.
- Rescind the Sedition Act, and ensure that any replacement legislation complies with international human rights standards.
- Revise the Malaysian Communications and Multimedia Act to eliminate overly broad definitions in the law of Internet content that the government is authorized to block.
- Ensure the government-appointed Registrar of Societies applies impartial and non-partisan standards to consider applications for registration.

Criminal Justice and Administrative Detention:

- Immediately release, or charge and prosecute under appropriate provisions of the penal code all those being held under the Internal Security Act. Ensure due process rights of those tried.
- Repeal or revise SOSMA and sections of the Penal Code and the Criminal Procedure Code that interfere with judicial independence for those detained under anti-terrorism legislation.Draft replacement legislation that requires immediate judicial oversight and limits police authority to interfere with court-ordered protections.

- Require investigation by an independent body, not including police personnel, of all cases of custodial deaths.
- Pass legislation setting up a fully Independent Police Complaints and Misconduct Commission modeled on the recommendation of the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police to investigate all cases of alleged police misconduct.
- Eliminate whipping as a form of punishment for sentenced criminals, military offenders and students.

Sexual Orientation and Gender Identity:

- Repeal article 377B of Malaysia's penal code, which criminalizes adult consensual "carnal intercourse against the order of nature" and is punishable by up to 20 years in prison and whipping.
- Replace article 377C on non-consensual sexual acts with a modern gender-neutral law on rape.
- Permit cross-dressing, sex-change operations, and changes in gender recorded on identity cards to reflect change in gender identity.

Refugees, Asylum Seekers, Migrants, and Trafficked Persons:

- Sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and enact domestic refugee law in line with international standards.
- Respect the international legal prohibition against refoulement.
- Permit refugees and asylum seekers the right to work and ensure the provision of education services for all refugee children.
- Amend the Employment Act and other labor legislation to ensure full and equal protections for domestic workers.
- Ratify International LabourOrganization Convention No. 189 on Domestic Workers and bring domestic law and practice into compliance.
- Train police and immigration officials to screen for cases of domestic worker abuse and human trafficking.Rescind all the 2010 amendments to the Anti-Trafficking in Persons Act that relate to people smuggling and revise the Immigration Act and other legislation focused on border control to ensure that there are separate legal frameworks for dealing with human trafficking and with people smuggling.
- Sign and ratify the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Human Rights Treaties:

- Sign and ratify without reservations the following four core human rights treaties: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Racial Discrimination. Bring all domestic law into conformity with the provisions of thesehuman rights treaties.
- Remove all reservations to the Convention on the Rights of the Child.
- Remove reservations to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); incorporate CEDAW into domestic law; amend the definition of rape to criminalize the full range of sexual assault including penetrative and non-penetrative offenses including rape with objects and marital rape: amend the Domestic Violence Act to recognize domestic violation as a separate offense under the Penal Code; pass a comprehensive law on sexual harassment covering women workers in organized and unorganized sectors.
- Remove reservations to articles 15 and 18 of the Conventionon the Rights of Persons with Disabilities; revoke the declaration limiting application of non-discrimination and equality; sign and ratify the Optional Protocol to the convention; and enhance efforts to ensure that buildings, facilities, and services open to the public are accessible for people with different disabilities.